

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

South Carolina Electric & Gas Company

Project No. 516-399

ORDER AMENDING LICENSE

(Issued December 21, 2004)

1. South Carolina Electric & Gas Company (SCE&G) and the South Carolina Coastal League and American Rivers (Conservation Groups) have filed a joint motion to amend the license for SCE&G's Saluda Project No. 516 to be consistent with terms of a settlement between them. As discussed below, we grant the amendment. This order is in the public interest because it resolves the Conservation Groups' complaint in a manner consistent with the terms of the license and the intent of the parties.

Background

2. On September 9, 2003, as amended on October 15, 2003, the South Carolina Coastal League and American Rivers (Conservation Groups) filed a complaint alleging that South Carolina Electric & Gas Company was violating the terms of the license for the Saluda Project by operating the project in a manner such that the standard for dissolved oxygen in the reach of the Saluda River below the project was not being met, and requesting that the company be ordered to comply with that standard. On October 17, 2003, the Commission issued public notice of the complaint.

3. On May 19, 2004, South Carolina Electric & Gas filed an uncontested offer of settlement, supported by the Conservation Groups. The settlement provided that SCE&G would develop yearly operating plans to enhance water quality in the lower Saluda River through the implementation of measures intended to achieve certain dissolved oxygen levels.

4. On July 15, 2004, the Commission issued an order approving the settlement and amending the license for the Saluda Project by adding new Article 31, requiring the preparation and filing of the yearly operating plans.¹ Article 31 reads as follows:

The licensee shall, consistent with the provisions of the Offer of Settlement filed by South Carolina Electric & Gas Company on May 19, 2004, and in cooperation with South Carolina Department of Health Environmental Control, South Carolina Department of Natural Resources, U.S. Fish and Wildlife Service, National Marine Fisheries Service, South Carolina Coastal Conservation League, and American Rivers, develop and file each year, for Commission approval, an operating plan to enhance water quality in the lower Saluda River. The plan shall include measures designed to achieve dissolved-oxygen levels of a minimum of 4 milligrams per liter (mg/l), a daily average of 5 mg/l, and a monthly average of 5.5 mg/l. The licensee shall file the initial plan within 60 days of the date of this order, and shall file subsequent plans each year thereafter by no later than June 30.

5. Both SCE&G and the Conservation Groups filed timely requests for rehearing. They asserted that they had not intended for the Commission to include the terms of the settlement in the project license, and that the specific language of the new article did not in any event accurately reflect their agreement.

6. On November 10, 2004, SCE&G and the Conservation Groups filed a joint motion to amend Article 31 consistent with the settlement terms. Specifically, the parties would (1) add to the article the temporal limitation “for the term of the Settlement,” based on their agreement that either party can withdraw from the settlement under certain conditions; and (2) delete the specified dissolved oxygen levels.

Discussion

7. In the July 15, 2004, Order, we concluded that the settlement provided an appropriate resolution of the matters raised in the complaint. Given that the parties did not provide any mechanism for the Commission to review compliance with the agreement, we crafted an appropriate license article to do so. Because the revisions to Article 31 proposed by the parties are consistent with the terms of the license and better reflect the intent of the parties to the settlement, we approve the requested amendment.

¹ 108 FERC ¶ 61,064 (2004).

The Commission orders:

(A) Article 31 of the license for the Saluda Project No. 516 is amended to read as follows:

Article 31. The licensee shall, consistent with the provisions of the Offer of Settlement filed by South Carolina Electric & Gas Company on May 19, 2004, for the term of the Settlement, and in cooperation with South Carolina Department of Health Environmental Control, South Carolina Department of Natural Resources, U.S. Fish and Wildlife Service, National Marine Fisheries Service, South Carolina Coastal Conservation League, and American Rivers, develop and file each year, for Commission approval, an operating plan to enhance water quality in the lower Saluda River. The licensee shall file the initial plan within 60 days of the date of this order, and shall file subsequent plans each year thereafter no later June 30.

(B) This order is final unless a request for rehearing is filed within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.